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10 **UNITED STATES DISTRICT COURT**
 11 **DISTRICT OF ARIZONA**

12 In Re Bard IVC Filters Products
 13 Liability Litigation

14 This Document Relates to All Actions

15 No. MD-15-02641-PHX-DGC

16 **MEMORANDUM AND CLARIFICATION
 REGARDING COMMON BENEFIT
 ESCROW ACCOUNTS**

17 (Assigned to the Honorable David G.
 18 Campbell)

19 Pursuant to this Court's Order of May 10, 2019 (ECF No. 17686) ("May 10
 20 Order"), Plaintiffs offer the below clarification on their pending motion to establish
 21 common benefit fund fee and expense accounts, to appoint an escrow agent, and to
 22 increase the common benefit assessments from six and two percent for fees and costs,
 23 respectively, to nine and five percent (ECF No. 16932) ("Motion"). This Memorandum
 24 also clarifies and corrects a contention in the reply memorandum submitted in support of
 the Motion.

25 Because the establishment of the accounts and the appointment of the escrow agent
 26 are not opposed, the Court directed the parties to file a proposed order authorizing the
 27 establishment of the accounts and the appointment of the escrow agent, while deferring
 28 decision on the increase in the assessment percentages. Plaintiffs submitted that proposed

1 order on May 1, 2019. *See* ECF Nos. 17493 and 17637 (noting Defendants' consent to
 2 the proposed order). The Court's May 10 Order pointed out that the escrow agreement
 3 that Plaintiffs submitted still reflects the proposed fourteen percent total assessment, and
 4 directed that Plaintiffs file a memorandum clarifying this issue.

5 Plaintiffs propose that the Court can authorize the establishment of the escrow
 6 accounts and appointment of the escrow agent, but that the escrow agreement reflect the
 7 lower assessment percentages. If the Court approves the increased assessment
 8 percentages, the signatories to the escrow agreement will expeditiously amend the
 9 agreement to provide for the altered assessment percentages. Plaintiffs have attached, as
 10 Exhibit 1, a copy of the escrow agreement that includes the lower assessment percentages.

11 In addition, Plaintiffs wish to clarify an assertion in the reply memorandum,
 12 submitted on May 10, 2019. ECF No. 17687. The reply asserted that the increased
 13 assessment percentages for fees and costs would not affect individual plaintiffs, because
 14 the assessment amounts would be drawn from fees already owed to individual plaintiffs'
 15 attorneys. *Id.* at 2, 5-6. While this is true of the additional three percent requested as
 16 applied to attorneys' fees, which would total nine percent, the additional three percent in
 17 costs would be borne by individual plaintiffs. This was pointed out to the PSC by an
 18 objecting attorney, and the PSC wanted to place this clarification on the record.

19 RESPECTFULLY SUBMITTED this 15th day of May, 2019.

20 BEUS GILBERT PLLC

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CERTIFICATE OF SERVICE

2 I hereby certify that on this 15th day of May 2019, I electronically transmitted the
3 attached document to the Clerk's Office using the CM/ECF System for filing and
4 transmittal of a Notice of Electronic Filing.

/s/ Jessica Gallentine